

BOARD OF GOVERNORS MEETING

SAN FRANCISCO

JUNE 8 -9, 2001

The Board of Governors of the State Bar of California convened in the in the Malcolm Lucas Board Room, Judicial Council Conference Center, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California, at 9:00 a.m., Friday, June 8, 2001, Palmer Brown Madden presiding.

The following members of the Board of Governors were present: Anthony P. Capozzi, Judith M. Copeland, Patrick R. Dixon, Janet M. Green, James R. Greiner, James E. Herman, Joe R. Hicks, Scott H. McNutt, Peter D. Nitschke, James D. Otto, Robert K. Persons, David L. Roth, John G. Snetsinger, Julie S. Sommars, Maria D. Villa, Scott Wylie, Erica R. Yew and Nancy J. Hoffmeier Zamora.

The following members of the staff also were present: Starr Babcock, Francis Bassios, Jerry Braun, Larry Doyle, Scott Drexel, Robert A. Hawley, Judy Johnson, David Long, Marie M. Moffat, Mike Nisperos, Victor Rowley and Mary Viviano.

The Board went into closed session at 9:00 a.m., and those other persons present in the meeting, except the Executive Director and members of the Senior Executive Team, left the meeting.

The Board resumed open session at 10.30 a.m.

300 The appointments were considered in confidential session and the actions of the Board are reported below.

6020 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Task Force on Appointments, that the Board hereby appoints Thomas J. Warwick, Jr., San Diego, member, Judicial Council, for a term commencing September 15, 2001, and expiring September 14, 2004, or until further order of the Board, whichever occurs earlier.

Voting yes: Messrs. Capozzi, Dixon, Greiner, Herman, Hicks, McNutt, Nitschke, Otto, Persons and Snetsinger and Mmes. Copeland and Sommars.

Voting no: Messrs. Roth and Wylie and Mmes. Green, Villa, Yew and Zamora.

The roll-call vote was taken and upon motion made, seconded and unanimously adopted it was

RESOLVED, that the roll-call vote will be substituted for the vote unless otherwise noted.

All members present and recorded on the roll-call slip voted yes on the above matter.

10 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, that the minutes of the meeting of the Board of Governors held on April 6, 2001, in San Francisco, hereby are approved as amended.

All members present and recorded on the roll-call slip voted yes on the above matter.

30 The President reported on the following:

1. The staff's report on the operation of State Bar committees has been referred to the Board Committee on Planning; said Board committee will discuss the report and make its recommendations to the full Board at the July meeting.
2. At the July meeting, the Board will consider a staff recommendation to appoint a new Commission for the Revision of the Rules of Professional Conduct to conduct a multi-year study to update our ethics rules.
3. The staff Task Force on Multi-Disciplinary Practice will report its findings and make its recommendations to the Board at its August meeting.
4. David Long, Director of Research, is retiring from the State Bar after fifteen years of service. The President presented Mr. Long with a Certificate of Appreciation which recognized his outstanding contributions to the Bar, the public interest and the legal profession in California. He thanked Mr. Long for his dedication to the Bar and wished him success in all his future endeavors.
5. The President created a Board Task Force on the Agenda Process to be chaired by Nancy J. Hoffmeier Zamora, and appointed Judith M. Copeland a member of said task force. The charge of the task force is to assist the Executive Director's review of the Board's agenda materials and make

recommendations to improve and simplify the whole agenda process.

41 The Executive Director reported on the following:

1. Over 300,000 copies of the State Bar's pamphlet *Kids and the Law* have been distributed to school districts as part of the State Bar's civic education initiative, exhausting our first printing. Additional copies will be ordered to meet the interested demand.
2. The Supreme Court-appointed committee, Applicant Evaluation and Nomination Committee, which will screen candidates for judicial appointments to the State Bar Court, has held its first organizational meeting. The committee is on schedule to meet the deadline of making recommendations to the Supreme Court by September 10, 2001, which will facilitate the Court to fill the vacancies by November 1, 2001, when the terms of the current presiding judge and two hearing judges expire.
3. The American Bar Association's House of Delegates passed a resolution of thanks, saluting the State Bar for its contribution to the success of ABA's 2001 Mid-Year meeting in San Diego. California will host the ABA's Annual Meeting in San Francisco in 2002, and will be the site of the ABA's Diversity Convention on April 11 -13, 2002.
4. A review of the 2001 membership's payments reflects, in addition to payment of mandatory fees, that: approximately 82 percent of all lawyers agreed to support our lobbying effort; 85 percent supported the Elimination of Bias Fund; about 9 percent made donations to the Conference of Delegates, generating about \$140,000 for Conference activities; and about 8 percent donated to the Foundation, generating about \$600,000 for the Foundation's scholarship and community service grants. There are 53,220 members in the State Bar's sections and these generate a combined section fund of just over \$3 million. There are 800 more section members in 2001 than in year 2000.
5. She discussed the realignment of staff and resultant organizational structure of the Bar to assure that quality service is provided within budget parameters.

54-114 The President announced that this item regarding potential discretionary funds is hereby removed from the open consent agenda and placed on the Board's regular open agenda.

51 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on

Administration and Finance, that the Board hereby receives the financial statement for the quarter ended March 31, 2001, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

52 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby receives the investment report for the quarter ended March 31, 2001, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

53 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby receives the Client Security Fund Report for the quarter ended March 31, 2001, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-111 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Administration and Finance, that the Board hereby accepts with thanks and orders filed the Annual Auditor's Report for the year ended December 2000.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-112 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby resolves as follows:

(a) that each of the persons whose name appears on the list this day before the Board is a member of the State Bar of California;

(b) that with respect to each member so listed, no release has been received from the appropriate local Child Support agency(s) pursuant to Family Code Section 17520 and Rule 962 of the California Rules of Court;

(c) that each member has been sent two written notices of the State Bar's obligation to suspend them pursuant to Family Code Section 17520;

(d) and hereby recommends to the Supreme Court of the State of California that each such member whose name appears on the list this day before the Board be suspended from membership from the State Bar and from the practice of law in the State of California until such time as he/she may be reinstated, upon the Bar's receipt of a release from the appropriate local Child Support agency(s) designating that he/she is no longer out of compliance with child and family support obligations, and upon a subsequent order of the Supreme Court terminating suspension; and it is

FURTHER RESOLVED, that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, the Secretary is authorized and directed to strike from the list this day before the Board the name of any member of the State Bar on whose behalf a release is received by the State Bar from the appropriate local Child Support agency(s) designating the member as no longer out of compliance with child and family support obligations; and to notify the Clerk of the Supreme Court forthwith of the receipt of such release and of the consequent withdrawal of the Board's recommendation for suspension; and it is

FURTHER RESOLVED, that members who receive a release from the district attorney prior to August 31, 2001, but subsequently fail to comply with the terms of that release will upon thirty-days notice, be recommended for suspension to the Supreme Court.

All members present and recorded on the roll-call slip voted yes on the above matter.

54-131 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Member Relations and Communications in concurrence with the Executive Committee of the Antitrust & Unfair Competition Section, that the Board hereby amends the bylaws of the Antitrust & Unfair Competition Section as follows:

§4. Executive Committee

. . . B. Members: The executive committee shall consist of a minimum of fifteen (15) members and a maximum of seventeen (17) members appointed by the

Board of Governors... and it is

FURTHER RESOLVED, upon recommendation of the Board Committee on Member Relations and Communications in concurrence with the Executive Committee of the Real Property Law Section, that the Board hereby amends the bylaws of the Real Property Law Section as follows:

§4. Executive Committee

B. Members:

... 2. Qualifications:

a. Members of the executive committee shall be members of the Section who have the ability and desire to accept the responsibility of leading the activities of the Section, giving consideration to the following factors (among others):

1. Demonstrated commitment to the Section;
2. Demonstrated commitment to other local, state or national bar association activities;
3. Demonstrated commitment to volunteer work other than bar activities;
4. Length of time in the practice of real property law;
5. Accomplishments of note to the legal community, the real estate industry or the general public; and
6. Leadership and other personal qualities indicative of ability to work well within the executive committee's structure.

b. In addition, diligent efforts should be made to assure that the executive committee collectively represents a breadth of perspectives relative to the activities and membership of the Section, giving consideration to the following factors (among others) :

1. Practice setting (e.g., private firm, in-house, government);
2. Size of law firm or practice;
3. Substantive focus of law practice;
4. Geographic location; and
5. Gender, ethnicity, disability, sexual orientation, age.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 54-151 The following is the report of action taken by the Board Legal Committee, on behalf of the Board, via fax poll on May 1, 2001 :

RESOLVED, that the Board Legal Committee, pursuant to the authority delegated to it to act on behalf of the Board between regular Board meetings, hereby denies the request to submit a pre-certiorari brief recommending that the Supreme Court grant certiorari in the case of *Festo Corporation v Shoketsu Kinzoku Kogyo Kabushiki Co. a/k/a/ SMC Corporation and SMC Pneumatics, Inc.*, 234 F.3d 558 (Fed. Cir. 2000) (en banc).

- 55 Upon motion made, seconded and unanimously adopted, it was

1. Morrison Lecture

RESOLVED, in connection with the 2001 Morrison Foundation Lecture, that the Secretary and the Director of Financial Services are each, acting alone, authorized to receive from the trust fund relating to said Lecture such sums as may be allocated for said 2001 Lecture, and to sign and execute any papers or documents which may be necessary for the receipt of said funds, and to disburse said funds to meet the expense of said Lecture; and it is

FURTHER RESOLVED that the Secretary and the Director of the Office of Finance are each, acting alone, authorized, in anticipation of reimbursement from said trust fund, to advance and payout sums to meet the expense of said Lecture.

2. Fixing the Time and Place of the 2001 Annual Meeting

RESOLVED, pursuant to article V, section 1, of the Rules and Regulations of the State Bar of California, that 10:00 a.m., on Thursday, September 6, 2001, in the Anaheim Hilton and Towers Hotel, 777 Convention Way, Anaheim, California 92802, hereby are fixed as the time and place for the commencement of the 2001 Annual Meeting of the State Bar of California.

3. Fixing the Time and Place of the 2001 Conference of Delegates

RESOLVED, pursuant to article VI, section 6 of the Rules and Regulations of the State Bar of California, that the Board hereby approves the 2001 meeting of the Conference of Delegates being called to order on Friday, September 7, 1, 2001, in the Anaheim Hilton and Towers Hotel, 777 Convention Way, Anaheim, California 92802, at 1 :30 p.m.

All members present and recorded on the roll-call slip voted yes on the above matter.

Mr. Albers and Ms. Nobumoto entered the meeting and were added to the roll-call vote.

702 The President introduced the Honorable William C. Harrison, President, and Connie Dove, Executive Director, of the California Judges Association. Judge Harrison thanked the State Bar for its continuing support of the independence of the judiciary and addressed the Board concerning the work of the association.

701 The President introduced Michael Kahn, Esq. , Chair, and Victoria Henley, Director-Chief Counsel, of the Commission on Judicial Performance. Mr. Kahn addressed the Board concerning the work of the commission.

The Board went into closed session at 1:15 p.m., and those other persons present in the meeting, except the Executive Director and members of the Senior Executive Team, left the meeting.

The Board resumed open session at 4:30 p.m.

300 The appointments were considered in confidential session and the actions of the Board are reported below.

6011 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Task Force on Appointments, that the Board hereby appoints or reappoints, as the case may be, officers and members to the section executive committees as set forth on the lists attached to the minutes and made a part hereof, effective at the close of the 2001 State Bar Annual Meeting, i.e., September 9, 2001, or as indicated; each officer and member to serve a term expiring as indicated, or until further order of the Board of Governors, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes on the above matter.

6012 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Relations and Communications, that the Board hereby appoints Monica T. Guizar, member, Board of Directors of the Legal Aid Society of Orange County, to serve for a three-year term commencing July 1, 2001 and expiring June 30, 2004.

All members present and recorded on the roll-call slip voted yes on the above matter.

6013 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Regulation and Discipline, that the Board hereby appoints the following members to the Appellate Law Advisory Commission, Estate Planning, Trust and Probate Law Advisory Commission, Family Law Advisory Commission, Immigration and Nationality Law Advisory Commission, and Taxation Law Advisory Commission, effective immediately, each member to serve for the term expiring at the close of the State Bar Annual Meeting in the year indicated, or until further order of the Board, whichever occurs earlier:

Appellate Law Advisory Commission

Cynthia A. Thomas, Elk Grove 2003

Estate Planning, Trust and Probate Law Advisory Commission

Margaret M. Hand, Oakland 2003

Paula Leibovitz, Orinda 2003

Family Law Advisory Commission

Seymour M. Rose, Walnut Creek 2003

Immigration and Nationality Law Advisory Commission

Howard Hom, Los Angeles 2003

Taxation Law Advisory Commission

Robert Lew, San Francisco (public member) 2003

All members present and recorded on the roll-call slip voted yes on the above matter.

6014 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, pursuant to the elections held by the California Law School Deans and upon the recommendation of the Board Committee on Regulation and Discipline, the Board hereby appoints David W. Burcham, Peter G. Keane, Patrick M. Broderick and Jack R. Goetz, members, Law School Council, each to serve for a three-year term commencing September 9, 2001, and expiring upon the conclusion of the 2004 State Bar Annual

Meeting, or until further order of the Board, whichever occurs earlier; and it is

FURTHER RESOLVED that the Board hereby appoints Karen D. Kadushin, member, Law School Council for a term commencing September 9, 2001, and expiring October 13, 2002, or until further order of the Board, whichever occurs earlier.

All members present and recorded on the roll-call slip voted yes on the above matter.

The Board recessed at 4:00 p.m., Friday, June 8, 2001, to meet again on Saturday, June 9, 2001, in the Malcolm Lucas Board Room, Judicial Council Conference Center, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California, at 9:00 a.m.

The Board of Governors of the State Bar of California convened in the Malcolm Lucas Board Room, Judicial Council Conference Center, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California, at 9:00 a.m., Saturday, June 9, 2001, Palmer Brown Madden presiding.

The following members of the Board of Governors were present: Ronald A. Albers, Anthony P. Capozzi, Patrick R. Dixon, Janet M. Green, James E. Herman, Joe R. Hicks, Scott H. McNutt, Peter D. Nitschke, Karen s. Nobumoto, James D. Otto, David L. Roth, John G. Snetsinger, Julie S. Sommars, Maria D. Villa, Scott Wylie, Erica R. Yew and Nancy J. Hoffmeier Zamora.

The following members of the staff also were present: Starr Babcock, Francis Bassios, Jerry Braun, Randall Difuntorum, Larry Doyle, Scott Drexel, Robert A. Hawley, Judy Johnson, Dean Kinley, Kris Krobot, Nancy McCarthy, Marie M. Moffat, Mike Nisperos, Victor Rowley and Mark Taxy.

The roll-call vote was taken and upon motion made, seconded and unanimously adopted it was

RESOLVED, that the roll-call vote will be substituted for the vote unless otherwise noted.

110 Mr. Albers, Chair, Board Committee on Administration and Finance, reported on the work of the committee. He reported that staff was formulating next year's budget, which should be available for presentation to the Board at the July meeting.

113 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby recommends that the proposed amendments to article " section 13, Rules and Regulations of the

State Bar of California, [Suspension of Members for Failure to Comply with Judgment of Order for Child or Family Support], in the form attached to these minutes and made a part hereof, be made available for a ninety (90) day period of public comment, pursuant to the provisions of section 3 of the *Procedures for Adoption Amendment, or Repeal of State Bar Regulations* ("Public Comment Rules".)

All members present and recorded on the roll-call slip voted yes on the above matter.

54-114 This item, which was previously removed from the open consent agenda at the request of the President, was discussed. Following the discussion, the President noted that membership generated money has many restrictions. Some money has less restrictions and ways to utilize it, as well as new sources of revenue, which should be explored.

130 Ms. Villa, Chair, Board Committee on Member Relations and Communications, reported on the work of the committee. She also reported that:

1. A joint meeting with the Board Committee on Regulation and Discipline was held recently regarding the unauthorized practice of law (UPL) and at which the Southern California Chinese Lawyers Association made an excellent presentation. The Board Committees agreed that the best approach to take is to merge the bar's existing 10-Point Plan on UPL with related efforts that the bar is undertaking to increase access to legal services. Staff has been requested to develop a proposal for presentation to a joint meeting of the two Board Committees in July.
2. At the joint meeting, Mr. Heilbron made an excellent presentation on the MCLE Report.
3. The State Bar received the Harrison Tweed Award for distinguished contribution to Legal Services; said award will be presented at the ABA's Annual Meeting at a special luncheon on Friday, August 3, 2001.
4. She noted that Chief Justice Ronald M. George has appointed former State Bar President Andrew Guilford and current Board member Erica Yew to the new Judicial Council Task Force on Self-Represented Litigants, which will assist the growing number of Californians who need to represent themselves in court proceedings because they cannot afford an attorney. This task force will be chaired by Justice Kathleen O'Leary and has among its member Judge Laurie Zelon who serves on the Access to Justice Commission.
5. She reported that Board member Scott Wylie is serving on the Unbundling

Committee of the Access Commission, and that Mr. Wylie would report on this issue at the August Board meeting, along with Judge Zelon, chair of the committee.

6. At the State Bar's Annual Meeting in September, the Office of Program Development is planning to hold 35 to 40 MCLE workshops.
7. The new Office of Legal Services, Access and Fairness is in the transition process and the Bar is close to finalizing the hiring of a director for this office.

130 Dean Kinley, Director, Media Information and Services (Acting) reported that revenues for the *California Bar Journal* are up for the first six months of 2001 due to increased advertising, and a greater number of lawyers using the MCLE Self- Test printed in the Journal because 2001 was a "double compliance period". The President urged members of the Board to write articles for the *California Bar Journal*.

132 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Member Relations and Communications, that the Board hereby repeals the Bar's Statement of Linking Policy, in the form attached to these minutes and made a part hereof, and directs the Bar's website administrators to devise and implement a linking policy for the State Bar's website in conjunction with the Office of General Counsel.

All members present and recorded on the roll-call slip voted yes on the above matter.

140 Mr. Roth, Chair, of the Board Committee on Planning, reported on the work of the committee and plans for the future.

142 Mr. Roth also announced that, following the review of the Requests for Proposals of governance experts, the Board voted to retain Douglas Eadie of Frisco, Texas, as the Board's governance consultant. Staff was directed to contract with Mr. Eadie. The Board will work with staff and Mr. Eadie to review and examine the existing Board governance practice and make recommendations for changes, improvements and adoption of Board principles of governance.

143 Mr. Roth, Chair, Board Committee on Planning, reported to the Board concerning strategic, operational and IT plans. He recommended that staff be directed to prepare draft plans for submission to the Board before the end of the 2000-2001 Board year. 143 Upon motion made, seconded and unanimously

adopted, it was

RESOLVED, upon recommendation of the Board Committee on Planning, that the Board hereby directs staff to go forward and develop strategic, operational and IT plans, under the direction of the Executive Director, and contract with consultants as necessary. The product would then be presented to the Board for review, input and adoption.

All members present and recorded on the roll-call slip voted yes on the above matter.

150 Ms. Nobumoto, Chair, Board Legal Committee, summarized the work of the committee. Ms. Nobumoto reported that the Board Legal Committee had reviewed a request for an amicus curiae brief participation in *Festo v SMC Corporation*, reported in item JUNE 54-151, open consent agenda.

160 In the absence of Mr. Greiner, Chair I Board Committee on Legislative and Court Relations, Ms. Yew reported on the work of the committee.

Marie Moffat, General Counsel, distributed amendments to the Technical Cleanup of State Bar Legislative Policies and Procedures. Board member Erica Yew and Executive Director Judy Johnson explained that the amendments merely deleted references to the Director of the Office of Research in the policies and procedures, substituting instead "Staff designated by the Executive Director," in light of the impending departure of David Long, Director of the Office of Research, and the proposed elimination of that specific position.

161 There was no legislative report presented to the Board.

162 There were no immediate action items presented to the Board.

163 Upon motion made, seconded, and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Legislative and Court Relations, that the Board hereby amends State Bar legislative policies and procedures, in the form attached to these minutes and made a part hereof, including (1) to reflect that a Board determination about meeting *Ke!!er* criteria is not needed for legislative activities funded from the lobbying deduction fund; (2) to make permanent the interim policy that legislative positions taken by the Board of Governors funded from State Bar general funds shall be within the parameters established by *Ke!!er v. State Bar*, 496 U.S. 1 (1990); (3) to make permanent the interim policy that the lobbying deduction fund shall be used to pay for legislative activities of committees and other State Bar entities that receive funding from the general fund; (4) to authorize the use of the lobbying deduction fund to pay

for all legislative activities of committees and other State Bar entities that receive funding from the general fund, to the extent that funds are available in the lobbying deduction fund; and (5) to make other non-substantive technical changes.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 164 Larry Doyle, Chief Legislative Counsel, reported to the Board regarding SB 1218 (Romero). He explained that the bill proposed to make changes to the law relating to allocation of the unclaimed residue of class action awards consistent with the objectives of the original legislation, which had been sponsored by the Board of Governors in 1993; and to repeal the current statutory requirement, enacted as part of the same 1993 legislation, that the State Bar create a California Legal Corps to receive and distribute such residuals. He said that since no residuals had ever been distributed to the California Legal Corps, nor were any likely to be, the entity had never been formed. Therefore this statutory language was unnecessary and counter-productive.

Upon motion made, seconded, and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Legislative and Court Relations, the Board hereby supports SB 1218 (Romero) which authorizes unpaid residuals from class action awards to be paid to nonprofit organizations providing civil legal services to the indigent and proposes to eliminate reference to the California Legal Corps, which has never been funded and does not exist.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 122 The President introduced David Heilbron, chair of the State Bar's MCLE Evaluation Commission. Mr. Heilbron delivered the report of the commission and answered questions from members of the Board with respect to the report and its preparation.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon the recommendation of the Board Committee on Regulation and Discipline, that the Board hereby receives the report of the MCLE Evaluation Commission and extends its thanks to the members of the commission for both the report and the efforts undertaken by the commission to prepare the report; and it is

FURTHER RESOLVED that the report be referred to the Board Committees

on Regulation and Discipline, Member Relations and Communications, and Legislative and Court Relations for review and study of the report's recommendations and report back to the Board of advised actions with respect to the recommendations no later than the scheduled July 27, 2001 Board meeting.

All members present and recorded on the roll-call slip voted yes on the above matter.

- 121 Mr. Otto, Chair, Board Committee on Regulation and Discipline, asked Deputy Executive Director Robert A. Hawley to summarize the staff recommendation presented in supplemental Board agenda materials distributed to the Board together with written comments recently submitted by interested parties. Following Mr. Hawley's summary, Mr. Otto introduced the following participants in the AB 2069 study conducted by the Committee on Professional Responsibility and Conduct (COPRAC) who were present to address the Board: Ellen Peck, Chair, COPRAC; Theodore Horton-Billard, Jr., member, COPRAC AB 2069 Advisory Council; Richard Hauser, member, COPRAC AB 2069 Advisory Council; John Pierce, member, COPRAC AB 2069 Advisory Council; and Karl Keener, member, COPRAC AB 2069 Subcommittee. Mr. Horton-Billard, Jr., Mr. Hauser, and Mr. Pierce presented the views of the insurance industry. Mr. Keener presented the views of associations of insurance defense counsel.

Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Regulation and Discipline, that the Board hereby accepts the Report of the Committee on Professional Responsibility and Conduct (COPRAC), in the form this day before the Board, and adopts the discussion therein as the Board's substantive analysis of the issue posed in Business and Professions Code Section 6068.11 at this stage; and it is

FURTHER RESOLVED, upon the recommendation of State Bar staff in consultation with Judicial Council staff, that the Board hereby directs staff to (1) seek an extension of the July 1, 2001 deadline to a date no later than March 31, 2002 for filing a final report with the Supreme Court and Legislature; and (2) establish a joint Judicial Council/State Bar Board member and staff "core" study group consisting of Judicial Council members appointed by the Chief Justice and State Bar Board members appointed by the State Bar President and also consisting of State Bar and Judicial Council staff, and then expanding to include "affiliate" representatives of the insurance defense bar, plaintiff's bar, the insurance industry, COPRAC and other interested constituents, to evaluate the options for action identified by COPRAC and to recommend a definitive course of action to be included in the Board's report to the Legislature and Supreme Court; and it is

FURTHER RESOLVED that the conflict of interest issues identified by COPRAC in its report be referred to the Office of the Chief Trial Counsel for its consideration in developing a written disciplinary enforcement policy addressing the exercise of prosecutorial discretion on complaints involving the potential violations of rule 3-310, Rules of Professional Conduct identified in COPRAC's report in light of the lack of clarity in the application of an attorney's duty of loyalty under the reasoning of *State Farm Mutual Auto Insurance Company v. Federal Insurance Company* (1999) 72 Cal.App.4th 1422; such enforcement policy to be reported back to the Board Committee on Regulation and Discipline; and it is

FURTHER RESOLVED that the Board hereby extends its thanks and deep appreciation to the representatives of the insurance defense bar, plaintiffs bar, the insurance industry, the Judicial Council, and the other participants who have worked closely with CORD and COPRAC to study the complex substantive and policy issues raised by Business and Professions Code section 6068.11.

All members present and recorded on the roll-call slip voted yes on the above matter, except Mr. Nitschke, who abstained from voting.

The Board adjourned at 1:15 p.m., Saturday, June 9, 2001, in memory of Associate Justice Ramona Godoy Perez of the Second Appellate District, Los Angeles, and Lloyd H. Riley of Sacramento, to meet again at the call of the President at any time prior to the next regularly scheduled meeting of the Board, or if no such meeting be called, in the Board Room of the State Bar's office in Los Angeles, on July 27, 2001.